

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

**MIGUEL A. RIVERA-SANTIAGO**  
**Petitioner-Appellant**

**v.**

**UNITED STATES OF AMERICA**  
**Respondent-Appellee**

**Cv. 97-1557(RLA)**

**PETITIONER'S REQUEST FOR CERTIFICATE OF APPEALABILITY  
PURSUANT 28 U.S.C. 2253( c)(1)(2000) AND LOCAL RULE 22.1(b),  
TO HONORABLE COURT'S FINDINGS ON 05/11/05, ON ISSUES REMANDED  
IN NO. 02-2458, 102 FED. APPX. 177, 2004 WL 1416626 (06/25/04)  
AND TO RETROACTIVITY OF BOOKER 125 S.CT. 738(2005),  
AND ANY OTHER REMEDY PURSUANT TO LAW**

**TO THE HONORABLE COURT  
HONORABLE RAYMOND L. ACOSTA,  
SENIOR U.S. DISTRICT JUDGE:**

Comes now the defendant, Miguel A. Rivera-Santiago, by the undersigned counsel, and very respectfully states, informs, and prays as follows:

1. On May 11, 2005, this Honorable Court concluded Evidentiary Hearings pursuant to a remand by the First Circuit in No. 02-2458 (06/25/04) and entered its findings denying the pending claims. The Notice of Appeal was filed and the Court of Appeals docketed it under No. 05-1887. On June 17, 2005, the Court of Appeals ordered the filing of a Certificate of Appealability pursuant 28 U.S.C., first sought before this Honorable District Court.

Petitioner-Appellant Miguel A. Rivera-Santiago respectfully objects the Court's findings entered on May 11, 2005, denying the pending claims remanded by the Court of Appeals in No. 02-2458(06/25/04). The Honorable District Court may have implicitly denied as well the 05/04/05 Blakely-Booker retroactivity motion (Dkt. #87), see also Government's Response (05/17/05)(Dkt. #97).

The instant Certificate of Appealability is addressed to the following:

- 1) a conflict of interest arose from the defense attorney's fee arrangement (No. 02-2458)(06/25/04);
- 2) due to said conflict of interest, Appellant's counsel (at trial) failed to relay the government's plea offer to Appellant;
- 3) Blakely-Booker is retroactive pursuant to the "watershed rule" exception, pursuant to Teague v. Lane, 489 U.S. 288 (1989), (see Dkt. #87 (05/04/05); Government's Response, Dkt. #97 (05/17/05)(probably implicitly denied by this hc).

Petitioner-Appellant has made a substantial showing of the denial of a constitutional right and has indicated the specific issues that satisfy said showing.

The Writ of Habeas Corpus plays a vital role in protecting constitutional rights. Slack v. McDaniel 529 U.S. 542 (2000); González v. Crosby, Jr., 2005 WL 1469516 (U.S. Supreme Court, 06/23/05).

THEREFORE, for the above stated reasons, it respectfully requested to this Honorable court, Honorable Raymond L. Acosta, Senior U.S. District Judge, to grant the instant request for a Certificate of Appealability pursuant to 28 U.S.C. 2253( c)(1)(2000), as drafted, and any other remedy pursuant to law.

I hereby certify that today I electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to Assistant U.S. Attorney Edwin Vázquez-Berrios, United States Attorney's Office, Torre Chardon, 350 Carlos Chardon St., Suite 1201, Hato Rey, PR 00918.

Respectfully submitted, in San Juan, Puerto Rico, today, July 13, 2005.

FOR COURT-APPOINTED DEFENDANT  
MIGUEL A. RIVERA-SANTIAGO

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